

No. 8109-4 Lab-72/31065.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Usha Spinning & Weaving Mills Ltd., 12/1 Mathura Road, Faridabad:—

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Application No. 12 of 1972 under section 33-A of the Industrial Disputes Act, 1947

between

SHRI RAJ KISHORE AND THE MANAGEMENT OF M/S USHA SPINNING AND WEAVING MILLS LTD., 12/1 MATHURA ROAD, FARIDABAD

Present:—Nemo, for the workmen:

Shri K. Kumar, Personal Officer, M/S Usha Spinning and Weaving Mills Ltd., Faridabad.

AWARD

This is a complaint under section 33-A of the Industrial Disputes Act, 1947. Shri Raj Kishore working as a Clerk with M/s Usha Spinning and Weaving Mills Ltd., Faridabad since 20th November, 1963 has been removed from service by the management with effect from 25th April, 1972. He has alleged that the impugned order has been passed by the management during the pendency of Reference No. 76 of 1969 and 35 of 1970 and without seeking the approval of this Tribunal thereby contravening the provisions of section 33-A of the Industrial Disputes Act, 1947 and as such he is entitled to re-instatement with full back wages.

Notice of the above complaint was given to the management. The management has filed a settlement dated 8th May, 1972 said to have been arrived at with Shri Raj Kishore, concerned workman. According to this settlement Ex. M-1 Shri Raj Kishore has received a sum of Rs. 1,923 in full and final settlement of his claim in addition to an *ex-grata* payment of Rs. 300/- made by the management as a gesture of goodwill. He has now no claim left with the management for his re-instatement or otherwise. As a matter of fact, he has given up his claim for re-employment with the present management as he has already accepted some other job with M/s Raunaq Malleables, Faridabad.

Statement of Shri K. Kumar, Personal Officer, M/s Usha Spinning and Weaving Mills Ltd., Faridabad to the above effect has been recorded which finds further support in the sworn testimony of Shri Nasib Chand, a co-worker of Shri Raj Kishore in the same department in the Mills. Shri Raj Kishore has not appeared to-day to pursue his complaint which in view of the facts stated above has been rendered infructuous.

The complaint, in the result, stands to be dismissed and I order accordingly but without making any order as to costs.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 1st July, 1972.

Endorsement No. 716, dated Faridabad, the 1st July, 1972

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 1st July, 1972.

The 25th July, 1972

No. 8189-4Lab-72/31370-A.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s National Air Products Ltd., Faridabad:—

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA

FARIDABAD

Reference No. 14 of 1971

between

THE WORKMEN AND THE MANAGEMENT OF M/S NATIONAL AIR PRODUCTS LTD,
FARIDABAD

Present —

Shri Darshan Singh, for the workmen.
Dr. Anand Parkash, for the management.

AWARD

The following disputes existing between the workmen and the management of M/s National Air Products Ltd, Faridabad, were referred for adjudication to this Tribunal by the Governor of Haryana, on the joint application of the parties in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947, — *vide* order No. ID/FD/347/8896, dated 25th February, 1971 :—

- (1) Whether grades and scales of pay should be fixed for the workmen ? If so, with what details and from which date ?
- (2) Whether workmen are entitled to the grant of D.A. ? If so, with what details and from which date ?

On receipt of the order of reference usual notices were given to the parties. In the statement of claim filed on behalf of the workmen it was alleged that the management was engaged in the manufacture of the Air Gases of various types having monopoly in the trade and had made huge profits and as such was in a position to pay higher scales of pay which should be fixed as under :—

	Rs
(i) Helper	150—15—300/25—500
(ii) Oxygen Filler	200—20—400/30—700
(iii) Operator	400—50—600/60—1,200
(iv) Supervisor (Oxy. Branch)	500—50—750/75—1,300
(v) Welder, Turner, Fitter	250—25—500/40—700
(vi) Compressor Attendant	300—30—500/50—1,000
(vii) Sweeper, Chowkidar, Cylinder Examiner	200—20—400/40—600
(viii) Hawaldar	200—25—400/40—800
(ix) Mechanical Foreman	800—75—1,100/100—1,500
(x) Chemist	600—50—900/75—1,500
(xi) Electrical Sup.	500—50—750/75—1,200
(xii) Test Shop Mistri	200—30—300/50—750

It was further urged that on account of the rise in the prices of goods and the standard of living it was very difficult for them to pull on with the present salaries and dearness allowance and the management should, therefore, be directed to pay to them dearness allowance at the rate of 75 per cent of their total wages with effect from 1st January, 1969. They also claimed Rs 1,000 as the costs of the present proceedings.

The management contested both the demands of the workmen. In the written statement filed in the case it was averred that the company was not enjoying any monopoly in the trade and being still in its infant stage having gone into production only in April, 1964, its financial position was rather precarious the total loss in 1969-70 being Rs 3,57,745. It was further urged that with a view to maintain harmonious relations between the parties the management had introduced gratuity scheme, provident fund scheme, in spite of its weak financial position and in addition to this double retirement benefit and *ex gratia* payment of 2 per cent bonus over and above minimum bonus of 4 per cent had been granted to the workmen. In the circumstances, it was contended that the demands put forward by the workmen were not sustainable. With regard to demand No. 1, it was further urged that the workmen were not entitled to claim scales of pay higher than what had been demanded in the charter of demands given to the management earlier.

From the pleadings of the parties the issues which arose for determination in the case were exactly the same as per the terms of reference given above.

Two of the concerned workmen, namely, Sarvshri Bindra Panday and Sewa Ram, Compressor Attendants, have come into the witness box besides examining Shri G. L. Jolly, Time-keeper, M/s Indian Oxygen Ltd, New Delhi, W.W.3, who has placed on record some documents including (i) statement showing details of pay-scales of the workmen in the said company, Ex. W.W. 3/1, (ii) statement showing payment of dearness allowance to the different types of workmen, Ex. W.W. 3/2, (iii) copy of memorandum of settlement, dated 27th April, 1969, arrived at between the management and the workmen of M/s Indian Oxygen Ltd, New Delhi, Ex. W.W. 3/3, printed copies of the balance-sheets of the company for the period 1964 to 1970, Ex. W.W. 3/4 to Ex. W.W. 3/10,

On the other hand, the management has examined two of its officers, namely, Shri A. V. Ganapathi, Administrative Officer, M.W. 1 and Shri K. C. Gangoli, Chief Engineer, M.W. 2. The documentary evidence

relied upon by the management comprises of the balance-sheet and the profit and loss account statement for the year 1969-70, Ex. M.W. 1/1, statement showing the financial condition of the company as per the balance-sheet for the year 1969-70, Ex. M.W. 1/2, Analysis of the manufacturing and trading account for the year ended 30th June, 1970, Ex. M.W. 1/3, statement showing the yearwise strength of the workers, Ex. M.W. 1/4, statement showing yearwise production, sales, wages and comparison, Ex. M.W. 1/5, details of the workers with their wages and grades, Ex. M.W. 1/6, statement showing the existing grades and scales of pay of the workers, Ex. M.W. 1/7, comparative statement of the balance-sheet of the Indian Oxygen Ltd, New Delhi and National Air Products Ltd., Faridabad, Ex. M.W. 1/8, copy of the demand notice received from the union, Ex. M.W. 1/9, copy of the settlement dated 10th November, 1969 between the workmen and the management of M/s National Air Products Ltd, Faridabad, Ex. M.W. 1/10.

The case has been argued on both sides. Written arguments have also been filed. I have very carefully gone through the evidence on record and given a considered thought to the contentions raised by the learned representatives of the parties with reference to the case law cited by them. The issues involved in the case are more or less interconnected and may safely be taken up together.

As would be clear from the perusal of the facts on the record, the claim of the workmen is essentially for increased pay-scales and dearness allowance. They are getting more than the prescribed minimum wages and the management has already introduced the incremental pay-scales. So, the question for determination is, whether the workmen have made out a good case for the grant of higher scales of pay and dearness allowance claimed by them. There is no gain-saying the fact that the above two demands put forward by the workmen would certainly impose an additional financial burden on the company. The law is very clear on the point. The financial position of the company has to be carefully examined before imposing the additional financial burden on it and reference may usefully be made here to a decision of the Supreme Court in Ahmedabad Mill Owners Association *versus* Textile Labour Association 1966-I-LLJ page 1 at 28 and 29 wherein their Lordships have been pleased to hold as under :—

Held : "On the other hand, in trying to recognise and give effect to the demand for a fair wage, including the payment of dearness allowance to provide for adequate neutralisation against the ever increasing rise in the cost of living, industrial adjudication must always take into account the problem of the additional burden which such wage structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden. The problem of constructing a wage structure must be tackled on the basis that such wage structure should not be changed from time to time. It is a long range plan ; and so, in dealing with this problem, the financial position of the employer must be carefully examined. What has been the progress of the industry in question, what are the prospects of the industry in future, has the industry been making profits ; and if yes, what is the extent of the profits ; what is the nature of demand which the industry expects to secure ; what is the extent of the burden and gradual increase which the employer may have to face ? These and similar other considerations have to be carefully weighed before a proper wage structure can be reasonably constructed by industrial adjudication."

From the perusal of the documents filed by the management it would be clear beyond doubt that the company is not in a position to take on any additional financial burden of the increase in wages as demanded by the workmen whether in the form of increased pay-scales or in the form of increased dearness allowance. The company started its production in 1964 only and its financial position has been rather precarious, the total loss suffered by it during the financial year 1969-70 being Rs 3,57,745 which includes carry-over loss of Rs 1,43,362 brought forward from the previous year. It has not been able to pay any dividends to the share-holders so far. The workmen have not been able to rebut the documentary evidence produced by the management on this material point. Their oral and vague assertions regarding huge profits alleged to have been earned by the company unsupported by any documentary proof do not carry much weight.

The workmen have based their claim mainly upon the pay-scales and other benefits available to their counterparts in the Indian Oxygen Company at Delhi but that too does not in any way advance their claim. Apart from the fact that the said company is not strictly speaking situated in the same region, the necessary data has not been brought on record to establish a comparison between this company and the National Air Products, Mathura Road, Faridabad, where the present claimants are working. The law is very well established on this point also. In 1964-I-LLJ-page 380 (at 385) (Workmen of Balmer Lawrie *versus* Balmer Lawrie & Co.) their Lordships the Judges of the Supreme Court were pleased to observe as under :—

Held : "It is necessary to emphasize that in dealing with the comparable character of industrial undertakings, industrial adjudication does not usually rely on oral evidence alone. This question is considered in the light of material facts and circumstances which are generally proved by documentary evidence. What is the total capital of its business, what is the extent of its business, what is the order of the profits made by the concern, what are the dividends paid, how many employees are employed by the concern, what is its standing in the industry to which it belongs, these and other matters have to be examined by industrial adjudication in determining the question as to whether one concern is comparable with another in the matter of fixing wages. Now, it is devious that these questions cannot be decided merely on the interested testimony either of the workmen, or the employer and his witnesses. Unfortunately, the Tribunal has lost sight of this important feature."

Novex Dry Cleaners, New Delhi *versus* Their Workmen F.J.R. Vol. XXII page 248 at 251 is yet another authority cited by the learned representatives of the management wherein it was held :—

Held : In dealing with the question of as to whether the appellant establishment was comparable to Snowwhite and Band Box, it was obviously necessary to compare the three institutions in respect of their standing, the extent of the labour force employed by them, the extent of their respective customers and, what is more important, a comparative study should have been made of the profits and losses incurred by them for some years before the date of the award. Unfortunately, the Tribunal has not even considered the balance sheets produced by the appellant showing the position of the profits and loss of the appellant itself."

Nothing to the contrary has been shown on behalf of the workmen. So, in the absence of the necessary data in the light of the pronouncements of their Lordships in the aforesaid two authorities the Indian Oxygen Company Delhi can be considered to be comparable with the National Air Products, Mathura Road, Faridabad for purpose of determination of the matter in issue in the instant case. On the contrary, it is clear from the evidence on record that the Indian Oxygen Company which was established some 40 years back and has 13 big branches in addition to a number of small branches spread over the entire country is a much bigger concern than the National Air Products, Mathura Road, Faridabad, and that being the case, the pay-scales and other conditions of service of the workmen in that concern can not be of help to the present workmen to justify their claim for increased pay-scales and dearness allowance.

It will not be out of place to consider here that inspite of the weak financial position of the company the management has already granted double retirement benefit to the workmen by introducing Provident Fund and Gratuity Schemes besides an *ex gratia* payment of 2 p.c. cent of the wages towards bonus for the year 1968-69. The workmen have also been given an *ad hoc* increase in their wages besides additional house-rent allowance and reasonable rates of increments in the existing scales of pay.

In view of the above, I am quite clear in my mind that the demands put forward by the workmen are not warranted by the financial capacity of the company and they have failed to make out a good case for the increased scales of pay and dearness allowance claimed by them. Both the issues are decided against them and the award is made accordingly. There shall be no order as to costs.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated 17th July, 1972.

No. 789, dated 17th July, 1972.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana.,
Faridabad.

Dated 17th July, 1972.

The 27th July, 1972

✓ No. 8319-4Lab-72/31632.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act. No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Khadi Ashram, G.T. Road, Panipat.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference Nos. 55 of 1971, 9 of 1972 and 36 of 1972

Between

Present.—Shri Raghbir Singh for the workmen.

Shri Roshan Lal Gupta for the management.

AWARD

The workmen of M/s Khadi Ashram at Panipat including Shri Om Parkash Verma and others raised certain disputes which have been referred for adjudication to this Tribunal by the Governor of Haryana, in exercise of the powers conferred under clause (d) of subsection (1) of Section 10 of the Industrial Disputes Act, 1947, and registered as references Nos. 55 of 1971, 9 of 1972 and 36 of 1972, the terms of reference being as per annexures I, II, III respectively.

The management in all the three references has raised a preliminary objection which is two fold, firstly, that the appropriate Government in the matter is the Central Government and not the State Government and, therefore, the references are invalid for want of jurisdiction, secondly, that the matter is resjudicata by virtue of the award dated 22nd January, 1968 in a previous reference No. 83 of 1967 between the same parties. The workmen have strongly contested the above plea of the management. The parties have pressed for decision on this preliminary issue before going into the merits of the case. This order will, therefore, dispose of the above issue which is common in all the three cases and reads as under:

Whether the appropriate Government to make the reference is the Central Government and not the State Government and whether this matter is barred by the principle of resjudicata by virtue of an earlier award dated 22nd January, 1968 in reference No. 83 of 1967 between the parties?

One of the concerned workman Shri Om Parkash Verma has come into the witness box and reliance has further been placed upon documents including the following.

1. Ex. W.W.1/1	.. Letter addressed to the Labour Minister, Government of India New Delhi.
2. Ex. W.W.1/2	.. Reply to this letter dated 9th April, 1970.
3. Ex. W.W.1/3	.. Letter dated 16th February, 1970 from the Labour-Cum-Conciliation Officer, Karnal
4. Ex. W.W.1/4	.. Letter dated 21st November, 1968 from the Regional Labour Commissioner (C) Kanpur to the General Secretary Khadi Karamchari Sangh, Kastur Bhawan Ward No. 1, Krishanpura, Panipat.
5. Ex. W.W.1/5	.. Letter dated 28th May, 1969 received from the Central Government.
6. Ex. W.W.1/6	.. Another letter dated 19th September, 1971 received from the Government.
7. Ex. W.W.1/7	.. Last letter received from the Central Government on the subject dated 17th November, 1969
8. Ex. W.W.1/8	.. Book containing the details of working of Khadi Ashram Panipat.
9. Ex. W.W.1/9 to Ex. W.W.1/12	Relevant extract from this book.

The management, on the other hand, has examined Shri Chota Lal, Assistant Secretary, Khadi Ashram Panipat and brought on record certain documents including copy of the certificate dated 3rd October, 1970 issued by the Khadi Commission Ex. M.W.1/1, copy of the Award dated August 3, 1967 in reference No. 72 of 1967 between the workmen and the management of M/s Punjab Khadi Gram Udyog Sangh Adampur Doaba Ex. M.W.1/2, copy of the award dated 22nd January, 1968 in reference No. 83 of 1967 between the parties., Ex. M.W.1/3.

The case has been fully argued on both sides and I have given a considered thought to the facts on record and the arguments advanced by the learned representatives of the parties. The first and the foremost question that arises for determination is whether appropriate Government to refer the aforesaid dispute for adjudication is the Central Government and not the State Government as contended on behalf of the management. Section 2(a) of the Industrial Disputes Act, 1947 provides that in relation to any industrial dispute concerning an industry carried on by or under the authority of the Central Government, the appropriate Government would be the Central Government. In the instant case also it has been urged on behalf of the management that the industry in which the present workmen are engaged is carried on under the authority of the Central Government. The contention has force and is warranted by the facts on record. It has come in evidence that the Khadi Ashram Panipat functions by virtue of a certificate issued under the authority of the Khadi and Village Industries Commission (copy Ex. M.W.1/1 on record) which is renewed from time to time. It can not legally function without such a certificate. A perusal of the relevant provisions of the Khadi and Village Industries Commission Act, 1956 (Act LXI of 1956) would further reveal that the said commission is entirely controlled by the Central Government in the matter of its constitution working for the achievement of its aims and objects (to plan, organise and implement programme for the development of Khadi and Village Industries, its finances, annual budgets, audits of accounts etc.

In view of the facts stated above which stand unrebutted the presumption is irresistible that the Khadi Ashram Panipat is engaged in an industry which to all intents and purposes is run under the authority of the Central Government and that being so the appropriate Government within the meaning of section 2(a) of the Industrial Disputes Act, 1947, is the Central Government and not the State Government. The fact that the Khadi Ashram Panipat is situated within the territorial limits of the State of Haryana or its business is carried on or there would make no difference.

That disposes of the first part of the issue involved in all these cases. As far the plea of resjudicata raised on behalf of the management also the facts on record speak for themselves and the law is very clear on the point. As held in the well known authority *Burn and Co. v. Calcutta versus their employees* 1957-I-LLJ-228 which has been followed in the subsequent cases the principle of resjudicata is based upon a sound public policy and is of universal application. There is no gain-saying the fact that the rule of resjudicata as laid down in section 11 of the Code of Civil Procedure is not in terms applicable to industrial adjudication but the principle underlying it must apply to the awards given by the Industrial Tribunal-Cum-Courts as to hold it otherwise would be contrary to the well recognised principle of law that the decision once given by competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. There would be no sanctity and finality attached to the awards of the Industrial Tribunal if the same matter is allowed to be raised between the parties again and again. The learned representative of the workmen has not been able to satisfy me to the contrary.

Now, as far the facts of the case, from the perusal of the award dated January 22, 1968 copy Ex. M.W.1/3 in the previous reference No. 83 of 1967, it would be clear beyond any shadow of doubt that this very issue was directly raised, heard and decided between the parties holding that the appropriate Government in such a matter was the Central Government and not the State Government. Admittedly the workmen did not challenge this finding by way of appeal or otherwise with the result that it became final between the parties and could not be re-agitated. The learned representative of the workmen has contended that an award given by a Tribunal under the Industrial Disputes Act ceases to operate as resjudicata with the change in circumstances. That is true. If the circumstances under which the previous award was given by the Tribunal have undergone change and the same matter is raised again in different circumstances the previous award could no longer be held to be resjudicata. But that is not the case so far as the present references are concerned. The parties remain the same and there is no material change in the nature of the industry involved. The learned representative of the workmen has drawn my attention to certain correspondence between the workmen and the authorities concerned of the Central Government which would show that on a reference made by the workmen on this point they were informed that the appropriate Government in their case was the State Government and not the Central Government. But this advise given to the workmen on administrative side without hearing the other party can not overrule the judicial verdict that had been given against them in the previous award. The proper course for the workmen was to challenge the previous award by way of appeal but as they did not do so they could not escape from the natural consequences of the matter being barred by operation of the principle of resjudicata.

For the reasons aforesaid, the preliminary issue in all the three references is decided against the workmen and, in the result, the references are held to be invalid for want of jurisdiction. In the circumstances, there shall be no order as to costs.

Dated 21st July, 1972.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 790, dated 21st July, 1972

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 21st July, 1972.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

B.L. AHUJA,
Commissioner for Labour and Employment
and Secretary to Government, Haryana.

PUBLIC WORKS DEPARTMENT
BUILDINGS AND ROADS BRANCH

Gurgaon Circle

The 18th July, 1972

No. 28GA/87-A/870.—Whereas it appears to the Governor of Haryana that land is likely to be required to be taken by the Government, at the public expense, for a public purpose, namely, for constructing an approach road from Gobindpur Nangal Mandi road to Chimnawas, it is hereby notified that the land in the locality described below is likely to be acquired for above purpose.

The notification is made under the provision of section (4) of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana is pleased to authorize the officers for time being engaged in undertaking with their servants and workmen to enter upon and survey any land in locality and do all other acts required or permitted by that section.

Any person interested who has any objection to the acquisition of any land in the locality may within thirty days of the publication of this notification, file an objection in writing before the Land Acquisition Collector PWD, B&R Branch, Ambala Cantt.

Name of District	Name of Tehsil	Name of village	Area in acres	Remarks
Gurgaon	Rewari	Chimnawas	0.49	Almost on both sides of consolidation path. As demarcated at site.

O. P. KAPUR,

Superintending Engineer,
Gurgaon Circle.